

Office of the Secretary of Labor

§ 34.45

(9) Determinations. The Director shall determine at the conclusion of the investigation of a complaint whether there is reasonable cause to believe that a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part has occurred.

(i) Upon making such a cause finding, the Director shall issue an Initial Determination. The Initial Determination shall notify the complainant and the respondent, in writing, of:

(A) The specific findings of the investigation;

(B) The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed, as provided in § 34.44;

(C) Whether it will be necessary for the respondent to enter into a written agreement, as provided in § 34.45; and

(D) The opportunity to engage in voluntary compliance negotiations.

(ii) Where a no cause determination is made, the complainant and the respondent shall be so notified in writing. Such determination represents final agency action of the Department.

§ 34.44 Corrective and remedial action.

(a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued pursuant to §§ 34.40, 34.41 or 34.43 respectively, shall include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance.

(b) Such steps shall include, but are not limited to:

(1) Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of JTPA or this part;

(2) Make whole relief where discrimination has been identified, including, as appropriate, back pay (which shall not accrue from a date more than 2 years prior to the filing of the complaint or the initiation of a compliance review) or other monetary relief; hire or reinstatement; retroactive seniority; promotion; benefits or other services discriminatorily denied; and

(3) Such other remedial or affirmative relief as the Director deems necessary, including but not limited to

outreach, recruitment and training designed to ensure equal opportunity.

(c) Monetary relief may not be paid from Federal funds.

§ 34.45 Notice of violation; written assurances; Conciliation Agreements.

(a) *State Programs.* (1) Violations at State-office level. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part has occurred at the State-office level, he or she shall notify the Governor through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, pursuant to §§ 34.40, 34.41 or 34.43 respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement, pursuant to paragraph (d) of this section.

(2) Violations below State-office level. Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part has occurred below the State-office level, the Director shall so notify the Governor and the violating recipient(s) through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, pursuant to §§ 34.40, 34.41 or 34.43 respectively.

(i) Such issuance shall: (A) Direct the Governor to initiate negotiations immediately with the violating recipient(s) to secure compliance by voluntary means;

(B) Direct the Governor to complete such negotiations within 30 days of the Governor's receipt of the Notice to Show Cause or within 45 days of the Governor's receipt of the Letter of Findings or Initial Determination, as applicable. The Director reserves the right to enter into negotiations with the recipient at any time during the period. For good cause shown, the Director may approve an extension of time to secure voluntary compliance. The total time allotted to secure voluntary compliance shall not exceed 60 days.

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(C) Include a determination as to whether compliance should be achieved by: Immediate correction of the violation(s) and written assurance that such violations have been corrected, pursuant to paragraph (d)(1) of this section; entering into a written Conciliation Agreement pursuant to paragraph (d)(2) of this section; or both.

(ii) If the Governor determines, at any time during the period described in paragraph (a)(2)(i)(B), that a recipient's compliance cannot be achieved by voluntary means, the Governor shall so notify the Director.

(iii) If the Governor is able to secure voluntary compliance pursuant to paragraph (a)(2)(i) of this section, he or she shall submit to the Director for approval, as applicable: written assurance that the required action has been taken, as described in paragraph (d)(1) of this section; and/or a copy of the Conciliation Agreement, as described in paragraph (d)(2) of this section.

(iv) The Director may disapprove any written assurance or Conciliation Agreement submitted for approval pursuant to paragraph (a)(2)(iii) of this section that fails to satisfy each of the applicable requirements provided in paragraph (d) of this section.

(b) *National Programs.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part has occurred in a National Program, he or she shall notify the National Program recipient by issuing a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, pursuant to §§34.40, 34.41 or 34.43 respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement pursuant to paragraph (d) of this section, as applicable.

(c) *Written assurance; Conciliation Agreement.* (1) Written assurance. A written assurance developed pursuant to this section must provide documentation that the violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

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(2) Conciliation Agreement. A Conciliation Agreement developed pursuant to this section must:

(i) Be in writing;

(ii) Address each cited violation;

(iii) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;

(iv) Provide for periodic reporting, as determined by the Director, on the status of the corrective and remedial action;

(v) Provide that the violation(s) will not recur; and

(vi) Provide for enforcement for a breach of the agreement.

§ 34.46 Final Determination.

(a) The Director shall conclude that compliance cannot be secured through informal means when:

(1) The grant applicant or recipient fails or refuses to correct the violation(s) within the applicable time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or

(2) The Director has not approved an extension of time in which to secure voluntary compliance, pursuant to §34.45(a)(2)(i)(B), and:

(i) Has not received notification pursuant to §34.45(a)(2)(iii) that voluntary compliance has been achieved; or

(ii) Has disapproved a written assurance or Conciliation Agreement, pursuant to §34.45(a)(2)(iv); or

(iii) Has received notice from the Governor, pursuant to §34.44(a)(2)(ii), that voluntary compliance cannot be achieved.

(b) Upon so concluding, the Director may:

(1) Issue a Final Determination which shall:

(i) Specify the efforts made to achieve voluntary compliance and indicate that those efforts have been unsuccessful;

(ii) Identify those matters upon which the Directorate and the grant applicant or recipient continue to disagree;

(iii) List any modifications to the findings of fact or conclusions set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;